

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE DAVID COUNTS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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PROCEEDINGS

(At 10:34 a.m., proceedings commenced)

(Defendant present)

THE COURT: The Court calls U.S. vs. Jesse Hardee in
MO:19-CR-265 today for sentencing.

5 MR. HARWOOD: Good morning, Your Honor. Glenn
6
7 Harwood for the Government.

MR. ROGERS: Judge, David Rogers. I'm here with
Mr. Hardee. We're present and ready.

10 THE COURT: Very good. Thank you.

11 || And you're Jesse Hardee, correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Good morning, Mr. Hardee.

14 Mr. Rogers, do you believe Mr. Hardee is competent?

15 MR. ROGERS: I do.

16 THE COURT: And have you reviewed with him the
17 Presentence Investigation Report?

18 || MR. ROGERS: I have.

19 THE COURT: Mr. Hardee, you've reviewed this report,
20 correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Rogers, are there objections or
23 corrections to the report?

24 MR. ROGERS: Yes, Your Honor.

25 THE COURT: All right.

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1 Mr. Hardee, have a seat.

2 And, Mr. Rogers, you may proceed.

3 MR. ROGERS: Your Honor, we had made several
4 objections. The Probation Department corrected two of them.
5 We had objected to obstruction and acceptance of
6 responsibility. The obstruction was taken out, and he was
7 granted acceptance of responsibility points. So I withdraw
8 those -- obviously, I withdraw those objections.

9 THE COURT: Yes, sir.

10 MR. ROGERS: Our two remaining objections -- Your
11 Honor, three remaining objections are, one, the amount of
12 narcotics is overstated; second, should he get a role
13 reduction; and, third, and this -- I'm going to put the
14 judgments in. I don't believe it to be a valid objection. But
15 in case an appellate lawyer believes differently, I have the
16 judgments. And our objection for the criminal history would be
17 is overstated and the evidence does not support it. I'm going
18 to put in the judgments. My calculations were 20. But if
19 someone else thinks different, I want to preserve that
20 objection, Judge, but in candor to the Court.

21 THE COURT: So as to that objection, I'll overrule
22 that objection just for the record.

23 MR. ROGERS: And I'll go ahead and give you those.

24 THE COURT: In case that helps in any way.

25 MR. ROGERS: It's Exhibits 4 through 10 and those are

1 just the corresponding judgments.

2 THE COURT: Any objection, Mr. Harwood?

3 MR. HARWOOD: None, Your Honor.

4 THE COURT: Those are admitted without objection.

5 MR. ROGERS: And the first objection, Your Honor, is
6 basically the amount of narcotics is overstated. I've got his
7 mother here to testify. A majority of the narcotic weight is
8 based on money. So I'm going to have her here to testify.

9 THE COURT: Ma'am, if you would come on up to the --
10 come on up here. And right before you get to the witness
11 stand, I'll have you stop and have you sworn in.

12 (Witness sworn by the clerk at 10:36 a.m.)

13 THE COURT: Mr. Rogers, go right ahead.

14 MR. ROGERS: Thank you. Also, in candor to the
15 Court, Your Honor, I'm submitting *United States vs. Haines*,
16 H-A-I-N-E-S, 803 F.3d 713. It's a 2015 Fifth Circuit case.
17 May I approach?

18 THE COURT: Yes, sir, you may.

19 MR. ROGERS: But it was not clear error to consider
20 money. We're going to make the objection regardless.

21 **COSANDRA McDougall,**

22 **DEFENDANT'S WITNESS SWORN AT 10:36 A.M.**

23 **DIRECT EXAMINATION**

24 BY MR. ROGERS:

25 Q. Tell us your name, please.

Cosandra McDougall - Direct Examination - June 10, 2020

1 A. Cosandra McDougall.

2 Q. And, Ms. McDougall, are you employed?

3 A. I'm retired.

4 Q. And how are you related to Mr. Hardee?

5 A. I'm his mother.

6 Q. Okay. Where did you retire from?

7 A. From M & P Construction in Crane.

8 Q. And when did you retire?

9 A. In February of 2014.

10 Q. And were you married?

11 A. Yes.

12 Q. How long were you married for?

13 A. 33 years.

14 Q. What did your husband do?

15 A. He was a supervisor, and then he was a finish blade
16 mechanic.

17 Q. And how much did he make?

18 A. Probably made 60- to \$70,000 a year.

19 Q. And I think you told us already, but I'll ask you again.

20 Did he pass away? When did he pass away?

21 A. Yes. We lost him December 10, 2018.

22 Q. Was it sudden or expected?

23 A. Yes. No, we were not expecting it at all.

24 Q. What happened?

25 A. He had been sick over the weekend. I had been treating

1 him for what we thought was the flu. Found out he had
2 pneumonia. I'm not for sure what all happened at the hospital
3 because they took him to the back, and next thing I knew he was
4 on life support.

5 Q. Did he use banks or how did he store his -- keep his
6 money?

7 A. He did not like the banks, no.

8 Q. After he passed away, did you find cash around the house?

9 A. Not in the house but out in his shop.

10 Q. Okay.

11 MR. ROGERS: May I approach, Your Honor?

12 THE COURT: Of course. Yes, sir.

13 Q. (BY MR. ROGERS) Let me show you what I've marked
14 Defendant's Exhibits 2 and 3. Is 2 a copy of Mr. Hardee's wage
15 stubs?

16 A. Yes, sir.

17 Q. What is the last date?

18 A. November 20th of '19.

19 Q. Did you pick these up at his place of employment?

20 A. Yes, uh-huh.

21 Q. Did you make any alterations to them?

22 A. No.

23 THE COURT: And by Mr. Hardee, we're talking about
24 the defendant?

25 MR. ROGERS: Yes, sir.

1 THE COURT: Okay. I just want to make sure.

2 Q. (BY MR. ROGERS) Where was he employed?

3 A. He was working for Aarons Services. It's an oil field
4 company.

5 Q. Okay. And tell us what Defendant's Exhibit No. 3 is.

6 A. This is a notebook that I've had after my husband passed.
7 He had been collecting tools for longer than we had been
8 married. And I started selling part of his things out of
9 there. We had a shop out at the house that had three rooms of
10 tools, and I'm still selling tools.

11 Q. When did you start selling the tools?

12 A. January of 2019.

13 Q. And you understand that in this case we're talking about
14 two separate amounts of money. One in the amount of \$40,098.

15 A. Yes, sir.

16 Q. You don't have any knowledge of where that money came
17 from, do you?

18 A. No, sir.

19 Q. The other amount that was on -- seized with you was
20 \$36,573; is that correct?

21 A. No, sir. It was \$36,672.

22 Q. Okay. And was that all your money?

23 A. Yes, it was.

24 Q. Was any of it provided to you from Mr. Hardee for drug
25 moneys?

1 A. No, sir.

2 Q. So the money that's attributable to him that was seized
3 with you, was that your money?

4 A. The money that they got from me?

5 Q. Yes.

6 A. Yes, it was all my money. Well, my husband's money and
7 then my money.

8 Q. Was any of that from the sale of narcotics?

9 A. No, sir.

10 MR. ROGERS: Your Honor, we move for the introduction
11 of Defendant's Exhibits 2 and 3.

12 THE COURT: Mr. Harwood.

13 MR. HARWOOD: No objection.

14 THE COURT: Those are admitted. 2 and 3 are admitted
15 without objection.

16 Q. (BY MR. ROGERS) And you are here today testifying freely
17 and voluntarily?

18 A. Yes, I am.

19 Q. And you have some pending charges in Crane County?

20 A. Yes, sir.

21 Q. And you have a lawyer representing you on that?

22 A. Yes, I do.

23 Q. And he understood you were going to testify today?

24 A. Yes, sir.

25 Q. And no one's coerced you into testifying.

1 A. Absolutely not, no.

2 Q. And no one's discussed that case with you or made any
3 promises or had anything to do with that, have they?

4 A. No, sir.

5 Q. Other than you have these outstanding charges?

6 A. Yes.

7 MR. ROGERS: Nothing further, Your Honor.

8 THE COURT: Mr. Harwood, your witness.

9 **CROSS-EXAMINATION**

10 BY MR. HARWOOD:

11 Q. Ms. McDougall, do you have any felony convictions?

12 A. No, sir.

13 Q. When you were stopped on the 26th of November, how much
14 methamphetamine was in your vehicle?

15 A. They said 73 grams, but I obtained a lawyer, and I am
16 willing -- I'm going to fight these allegations.

17 Q. Who said 73 grams?

18 A. That's what was in my paperwork they sent me.

19 Q. Was there methamphetamine in your vehicle?

20 A. Very little.

21 Q. How much?

22 A. I have no idea.

23 Q. Whose was it?

24 A. I guess it was mine. It was in my purse.

25 Q. Well, okay. Did you purchase that methamphetamine?

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1 A. No, I did not.

2 Q. It just magically ended up in your purse.

3 A. No. It was given to me.

4 Q. Who gave it to you?

5 A. A friend of mine.

6 Q. What's your friend's name?

7 A. I'm not at liberty to say.

8 Q. Well, you're certainly under oath and you're --

9 A. I certainly am, and I am going to plead the Fifth.

10 MR. HARWOOD: Nothing further, Your Honor.

11 THE COURT: Redirect?

12 MR. ROGERS: No, Your Honor.

13 THE COURT: You may step down. Thank you.

14 MR. ROGERS: And finally, Judge, I would move for
15 Defendant's Exhibit 1. It's a copy of the lab results.

16 THE COURT: Oh, okay.

17 Mr. Harwood?

18 MR. HARWOOD: No objection, Your Honor.

19 THE COURT: The lab results for?

20 MR. ROGERS: That were referenced in the Presentence
21 Report for the drug weights.

22 THE COURT: Oh, okay. That's admitted without
23 objection. Thank you.

24 MR. ROGERS: And our argument would be, Judge, that
25 the amounts seized are not -- don't correlate to the amounts of

1 money in Mr. Hardee's possession and, therefore, the cash
2 amount is vastly overstated.

3 In regards to the statements contained, my problem
4 with the statements, Judge, is Mr. Hardee gave a statement,
5 number one, that's referenced in the PSR. He then gives a
6 second statement and basically it is the officer saying: We
7 have your mother. We found meth in her purse. Will you talk
8 to us? Mr. Hardee agrees and says, Yes, and the tape ends.
9 So -- and I always date myself when I say "tape." I know it is
10 not a tape anymore. But there is nothing corresponding, you
11 know, to what was actually said.

12 So our basic objection, Judge, is with the documents
13 we provided for you, the methamphetamine and the narcotics
14 amounts should be, you know, cut in half, if not more, because
15 we've shown that this -- the money was his mother's.

16 In regards to the rule, Your Honor, I made that
17 objection. It was basically a two-person conspiracy. There is
18 no other evidence of him dealing with anybody else. There was
19 some mention of a Mr. Flores, but he was not put in that
20 conspiracy. It was a two-person conspiracy, like I said,
21 between him and Heather Griffith, who you're about to sentence.
22 There was no controlled buys, no evidence of buys. So I've
23 asked for that role reduction, and I'll leave that up to the
24 Court.

25 THE COURT: All right. Let me just say then as to

1 the second objection, the role reduction, the Court relies upon
2 the probation officer's respond and the facts in the case. I
3 don't see where 3B1.2 has been -- met that definition of him
4 having a mitigating role. So I don't see that -- so I'll
5 overrule that objection.

6 I want to talk about the relevant conduct objection,
7 however.

8 Mr. Harwood, what would you respond?

9 MR. HARWOOD: Your Honor, as to the money, what the
10 Court's been provided is some ledgers and some receipts, and so
11 I would just like to comment on the evidence.

12 THE COURT: Yes, sir.

13 MR. HARWOOD: Additionally, you had some testimony
14 from the defendant's mother. The defendant's mother was
15 traveling with the defendant's -- codefendant/fiancée/
16 girlfriend, whatever relationship they had -- in that vehicle
17 together to the defendant's house with -- with them
18 30-some-odd-thousand dollars in cash. At the defendant's home
19 he had 30-some-odd-thousand or \$40,000 in cash.

20 So the disputes amount is this \$30,000 in cash. The
21 testimony was that they said 73 grams of methamphetamine were
22 found there. She admitted that it was in her purse. That it
23 was some amount. She won't say where she got it. Her
24 testimony about the drugs is not credible. Because her
25 testimony about the drugs is not credible, you can find that

1 she's not credible. In fact, she probably wisely invoked her
2 Fifth Amendment right to not answer any other questions.

3 But what the Court can consider is the fact that if
4 we're talking about garage selling her deceased husband's
5 tools, people don't write receipts for that kind of thing,
6 generally. The notes and the receipts are all in the same
7 handwriting all at the same time. It looks more like it was
8 something that was prepared to make an argument in court.

9 Based on her activity, who she was with, where she
10 was going, the attendant circumstances around the case, it's
11 more likely than not that that 30-some-odd-thousand dollars is
12 attributable to the defendant just like the
13 40-some-odd-thousand dollars at the defendant's residence
14 before his mother and girlfriend/codefendant get to the
15 residence. The government believes that there is a
16 preponderance of evidence where the Court can make a good faith
17 calculation and attribute that money to drug activity and,
18 therefore, convert it as the probation office has done.

19 THE COURT: Mr. Rogers, anything else?

20 MR. ROGERS: No, Your Honor.

21 THE COURT: The Court overrules the objection in
22 reliance on that argument as well as the response from the
23 probation officer. The Court finds Ms. McDougall's testimony
24 to be wholly incredible and unbelievable. I do find as well
25 the exhibits that show -- I guess the attempt is to show some

1 plausible explanation of where that money came from. Taken at
2 face value, I believe, you could bend your mind to believe
3 that. However, they do appear to me -- the same as Mr. Harwood
4 mentioned, they appear to be almost carbon copies of each
5 other, though the numbers and names have been change. I think
6 that's clear from a viewing of the -- of some of those
7 receipts, some of the hand notes or the -- I guess from the
8 notebook look a little different than that.

9 But I will state that in looking at Paragraph 12, I
10 believe, Mr. Hardee ordered 3 to 4 ounces of methamphetamine, 1
11 to 2 ounces of heroin, and 1 ounce of marijuana. He reported
12 that he, quote/unquote, re-upped once a week since
13 January 2019. The total amount of moneys attributed to him is
14 \$77,671.62. Given that purchasing history, if you divide those
15 moneys up, it's really very plausible and believable that that
16 money was all derived from those narcotics trafficking
17 activities.

18 If you figure out -- and the probation officer went
19 deeper than I did. She says 3/5 of the moneys were calculated
20 for methamphetamine, 1/5 of the money is calculated for heroin,
21 and 1/5 of the money is calculated for marijuana. And so we
22 reach this total of 132,661.27 kilograms. I keep double
23 checking that because that seems like a lot, but it would add
24 up in doing that.

25 So the Court overrules the objection as I already

1 overruled the mitigating role or minor participant objection as
2 well.

3 Mr. Hardee is certainly anything but a minor
4 participant, and he certainly had anything but a mitigating
5 role in this offense.

6 Are there other objections?

7 MR. ROGERS: We ask for a sentence reduction. I'll
8 address that whenever you want me to.

9 THE COURT: Yes, sir. Okay. And we'll get to that.

10 Mr. Harwood, are there objections or corrections to
11 the report from the government?

12 MR. HARWOOD: None, Your Honor.

13 THE COURT: The Court has reviewed the Presentence
14 Investigation Report prepared by U.S. Probation Officer Angela
15 Lopez.

16 I find the report to be accurate. I adopt it and the
17 application of the United States Sentencing Guidelines
18 contained in the report.

19 I find the total base offense level is 35.

20 Criminal history category is VI.

21 The guideline range is 292 to 365 months.

22 Five years' supervised release.

23 Mr. Hardee is ineligible under the guidelines for
24 probation.

25 \$40,000 to \$10 million fine is available.

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1 \$100 mandatory special assessment.

2 And there is, I do note, Mr. Rogers, that you have
3 made a motion. Go right ahead.

4 MR. ROGERS: And I didn't object to the fine, Your
5 Honor. I would just point out he is indigent and represented
6 by court-appointed counsel in this case.

7 THE COURT: I agree with you.

8 Mr. Hardee, go ahead and stand.

9 Yes, sir.

10 MR. ROGERS: We have asked for a downward departure
11 in this case. One, I don't think there is anything in the code
12 that says the Court cannot consider this. It's his birthday.

13 Secondly, in reality, Your Honor, not to make light
14 of the matter, this is -- we have to talk about what takes this
15 case out of the heartland. The only thing that really might
16 take this case out of the heartland that you can hang your hat
17 on is the fact that there are no controlled buys, there are no
18 confidential informants, there are no snitches. I think that's
19 the same as confidential informants.

20 THE COURT: Yes, sir.

21 MR. ROGERS: But you don't have anything attributing
22 Mr. Hardee to drug trafficking other than, you know, statements
23 and money; but you don't have any, as they say, dope on the
24 table.

25 So that's what would take this out of the heartland,

1 and we would ask for a sentencing reduction because he's facing
2 an incredible amount of time. And if you look at his prior
3 sentences, it looks like he got a bunch of those at the same
4 time. They were three-point hits, and then he got some in
5 Odessa. I think in 2017. And then he was on parole out of
6 Judge Whalen's court, and that got him an extra two points.

7 THE COURT: Okay.

8 So, Mr. Hardee, what would you like to say? Go right
9 ahead.

10 THE DEFENDANT: I would like to start off by saying I
11 take full responsibility for my actions. I want to apologize
12 to whoever I may have affected with my negative manner dealing
13 with drugs, but -- I made multiple mistakes throughout my life
14 linked back to my addiction. But if I [sic] can find in your
15 heart to see past my drug use and give me an opportunity to
16 work during my time of incarceration so I can better myself
17 and -- for myself -- for me and for my loved ones. And in
18 close, I would like to thank you for listening to what I have
19 to say, Your Honor. And if you could please take everything
20 into consideration, I'd greatly appreciate it.

21 THE COURT: Thank you, Mr. Hardee. I was looking at
22 your picture in the report. You look way better. You look way
23 better now. I think you look healthy now.

24 THE DEFENDANT: Appreciate it.

25 THE COURT: I mean, you didn't look real healthy back

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1 then, but you look healthy now. So I'm glad -- hopefully this
2 is going to help. I pray it does. But you had been unemployed
3 for a couple of months prior to that arrest anyway. And so, I
4 mean, obviously you were selling drugs, but I know you were
5 using as well. Correct?

6 THE DEFENDANT: Mostly using.

7 THE COURT: Mostly using. Okay.

8 Mr. Harwood.

9 MR. HARWOOD: Your Honor, the government believes the
10 guidelines are appropriate. \$70,000 means different things to
11 different people. To some people, it means a nice new truck;
12 and we see that a lot around Midland. But in this case, the
13 government would urge the Court to consider that \$70,000
14 represents \$20 at a time, \$100 at a time to people hooked on
15 the poison that the defendant was feeding them a paper at a
16 time or a gram at a time or an eight ball at a time. That's a
17 lot of money. That's a lot of poison that the defendant was
18 dealing, including to people that he claimed to love, probably
19 his mother and at least his codefendant girlfriend. That's a
20 lot of money. It's a lot of drugs. And the government
21 believes that the guidelines accurately reflect his conduct.

22 THE COURT: Thank you.

23 I also received a letter from your mom too. I wanted
24 you to know that. And I'm sorry about your dad dying. She
25 mentioned that as well.

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1 THE DEFENDANT: Thank you.

2 THE COURT: The Court does not depart and will deny
3 the defense motion for downward departure, finding that the
4 case does not lie outside the heartland of cases of this
5 nature.

6 The Court does not depart from the recommended
7 sentence.

8 Pursuant to the Sentencing Reform Act of 1984, which
9 I have considered in an advisory capacity, and the sentencing
10 factors set forth in 18 U.S.C., Section 3553(a), which I have
11 considered in arriving at a reasonable sentence, I find the
12 guideline range in this case to be fair and reasonable.

13 The defendant is placed in the custody of the United
14 States Bureau of Prisons to serve a term of imprisonment of
15 365 months.

16 Upon release from the United States Bureau of
17 Prisons, you are placed on supervised release to serve a term
18 of five years.

19 The standard and mandatory conditions of supervision
20 are imposed.

21 And I'll include also the search condition of
22 supervision within the Western District of Texas.

23 There is no fine imposed. I do agree with Mr. Rogers
24 that you're unable to pay a fine because you're unable to work.
25 You're unable to sell drugs like you've been doing for some

1 time.

2 And there is a \$100 mandatory special assessment you
3 are required to pay to the Crime Victims Fund.

4 Your Presentence Report will be sealed.

5 You have the right to appeal your conviction and your
6 sentence, assuming you have not given up that right. You must
7 file Notice of Appeal in writing within 14 days of the entry of
8 this judgment. If you are unable to afford an attorney or the
9 transcript of the record of the case on appeal, those will be
10 provided at no expense to you, Mr. Hardee.

11 Mr. Rogers.

12 MR. ROGERS: Judge, we would further object to the
13 sentence in this case is procedurally and substantially
14 unreasonable for the reasons I've set forth.

15 THE COURT: Yes, sir. Thank you.

16 Mr. Harwood.

17 MR. HARWOOD: Nothing further, Your Honor.

18 THE COURT: Is there any request for a placement, do
19 you know?

20 MR. ROGERS: Where do you want to go?

21 THE DEFENDANT: Seagoville.

22 THE COURT: Seagoville. I'll make that
23 recommendation. That's all it is, but hopefully they will try
24 to get you there.

25 I remand you to the custody of the United States

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1 Marshals to serve your sentence. I wish you the best. I wish
2 the best to your mom and family as well. Thank you.

3 MR. ROGERS: And, Judge, I'll have the Motion to
4 Withdraw filed and the Notice to Appeal.

5 THE COURT: Thank you, Mr. Rogers.

6 (Proceedings concluded at 10:57 a.m.)

7 * * * * *

8 C E R T I F I C A T E

9
10 I, ANN M. RECORD, United States Court Reporter for
11 the United States District Court in and for the Western
12 District of Texas, hereby certify that the above and
13 foregoing contains a true and correct transcript of the
14 proceedings in the above-entitled and numbered cause.

15 WITNESS MY HAND on this 7th day of August, 2020.

16

17

18

/s/Ann M. Record

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